

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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McCORMICK & CO., INC.,

Plaintiff,

Case No.: 07-CV-7244 (SCR)

-against-

NOTICE OF MOTION TO
DISMISS THE COMPLAINT

KARI-OUT CLUB, LLC, t/a KARI-OUT CO.,

Oral Argument Requested

Defendant.

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PERK UP, INC., s/h/a KARI-OUT CLUB, LLC,
t/a KARI-OUT CO.,

Third Party Plaintiff,

-against-

SHAMBAUGH & SON, LP,

Third Party Defendant.

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PLEASE TAKE NOTICE that, upon the accompanying Affidavit of Gregg Minkin, sworn to on the 28th day of January, 2008 and the exhibits thereto, the accompanying Affidavit of Jeff Johns sworn to on the 24th day of January, 2008, the accompanying Memorandum of Law, and all prior pleadings and proceedings in this action, Third-Party Defendant SHAMBAUGH & SON, L.P. ("SHAMBAUGH"), by and through their undersigned counsel, will move this Court before the Honorable Stephen C. Robinson, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007 for an Order:

- a. directing that Indiana law apply to this action;
- b. dismissing each and every claim asserted in the Third-Party Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failing to state a claim upon which relief can be granted;

- c. staying discovery in the third-party action pending the Court's decision on this motion; and
- d. granting SHAMBAUGH its costs, including attorney's fees, together with such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
January 28, 2008

LONDON FISCHER LLP

By: 

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